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and Singleton

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HALEY WRIGHT, EMILY WRIGHT, and  
JESSICA WRIGHT,

Plaintiffs,

v.

CITY OF SANTA CRUZ, COUNTY OF  
SANTA CRUZ, MARK YANEZ, TATE  
HOWE, KENNY BESK, ANTHONY  
PARKER, BRENDAN OMORI, JOHN  
FERNANDEZ, DRUG ENFORCEMENT  
ADMINISTRATION, JOSHUA  
SINGLETON, TWENTY UNKNOWN  
INDIVIDUALS and AGENCIES,

Defendants.

CASE No. 13-cv-01230 BLF

**STIPULATION and ~~PROPOSED~~ ORDER  
REGARDING BRIEFING SCHEDULE ON  
INDIVIDUAL FEDERAL AGENTS'  
MOTION TO DISMISS**

1 The parties hereby stipulate to, and propose, a change in the briefing schedule on the  
2 pending motion to dismiss filed by Defendants John Fernandez, Brendan Omori, Anthony  
3 Parker, and Joshua Singleton (“Individual Federal Agents”). (Dkt. No. 91). The parties  
4 stipulate *only* to a change in the briefing schedule, and the Individual Federal Agents object to  
5 any continuation of the hearing date.

6 Defendants John Fernandez, Brendan Omori, Anthony Parker, and Joshua Singleton  
7 (“Individual Federal Agents”) were members of a DEA Joint Task Force investigating a  
8 dangerous drug ring in Santa Cruz, California. After they arrested Plaintiff Haley Wright,  
9 Ms. Wright and her sisters sued them and other defendants alleging tort and constitutional  
10 claims. (Dkt. No. 1). The United States, sued under the Federal Tort Claims Act (“FTCA”),  
11 was dismissed when the Court held that Plaintiffs’ failed to exhaust administrative remedies  
12 as required by the FTCA. (Dkt. No. 67). The Court denied the Individual Federal Agents’  
13 motion to dismiss for improper service (*see id.*), but later granted their motion to dismiss for  
14 failure to state a claim, with leave to amend. (Dkt. No. 89). The Court also set a trial date of  
15 January 11, 2016, and set a summary judgment filing deadline of September 10, 2015.<sup>1</sup>

16 Plaintiffs’ filed a first amended complaint, and the Individual Federal Agents’ also  
17 moved to dismiss that complaint for failure to state a claim, and based on qualified immunity  
18 on December 10, 2014. (Dkt. No. 91). The hearing for that motion is set for January 22,  
19 2015, and Plaintiffs’ opposition is presently due December 24, 2014. *See* L.R. 7-3(a). For the  
20 reasons set forth below, Plaintiffs requested an extension of time. The Individual Federal  
21 Agents do not oppose this request *provided that* it does not delay the hearing date. In light of  
22 the trial date and summary judgment schedule, the Individual Federal Agents cannot agree to  
23 delay the hearing date unless the other pre-trial dates are also continued.

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26 <sup>1</sup> The Court’s order did not set a specific date for filing, but set a schedule to hold any summary  
27 judgment hearing on October 22, 2015, with any reply due by October 1, 2015. Given this Court’s  
Local Rules, this results in a *de facto* filing deadline of September 20, 2015.

As a compromise, the parties stipulate that the schedule be altered as follows:

Event	Current Date	Proposed Date
Plaintiffs' Opposition	December 24, 2014	December 31, 2014
Defendants' Reply	December 31, 2014	January 7, 2014
Hearing	January 22, 2015, 9:00 a.m.	January 22, 2015, 11:00 a.m.

This continuation is necessary and appropriate in light of the circumstances of Mr. Lodge, one of Plaintiffs' attorneys. First, Mr. Lodge was out of the country until December 15, 2014. Second, his mother became gravely ill while he was away, and now placed on hospice, and he is now her primary caretaker. Third, Mr. Lodge had oral surgery after returning to the United States, and had to take substantial pain killers for several days, which reduced his ability to work. In light of these circumstances, the parties agree that an extension is appropriate.

The parties contacted the Court to determine whether the hearing could be continued a short time to permit such an extension, but the Court's next available hearing date is not until March 26, 2014. The Individual Federal Agents cannot agree to that date given the January 2016 trial date and the September 2016 summary judgment filing deadline. No discovery has occurred in this case, and the Individual Federal Agents are "entitled to dismissal before the commencement of discovery" unless "the plaintiff's allegations state a claim of violation of clearly established law...." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). Given the current schedule, moving the hearing date to March 26, 2015, will compact the discovery calendar, particularly because counsel for the Individual Federal Agents is scheduled for trial on June 2, 2015, June 22, 2015, and August 25, 2015.

Thus, the parties agree and stipulate to adjusting the internal briefing schedule as set forth above, but keeping the January 22, 2015, hearing date. Finally, the parties request that the January 22, 2015, hearing be set for 11:00 a.m. in light of the parties' travel requirements, as previously discussed with this Court on the record.

1 Respectfully Submitted,

2 DATED: December 22, 2014

3 By: /s/  
4 AARON LODGE  
Attorney for Plaintiffs

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6  
7 DATED: December 22, 2014

BENJAMIN B. WAGNER  
United States Attorney

8  
9 By: /s/  
10 GREGORY T. BRODERICK  
Assistant United States Attorney

1 PURSUANT TO STIPULATION, IT IS SO ORDERED, THAT:

2 Plaintiffs' opposition to the Individual Federal Agents' pending motion (Dkt. No. 91)  
3 shall be due not later than December 31, 2014, and any reply shall be due by January 7, 2015.  
4 The hearing on the motion shall remain scheduled for January 22, 2015, but the time shall be  
5 set for 11:00 a.m.

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7 Dated: December 23, 2014

  
8 HONORABLE BETH LABSON FREEMAN  
9 UNITED STATES DISTRICT COURT JUDGE  
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